

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Brooke Lewis	Team: Bias Squad #01	CCRB Case #: 202208866	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/28/2022 7:25 PM	Location of Incident: West 45th Street and 7th Avenue	18 Mo. SOL 6/28/2024	Precinct: 14		
Date/Time CV Reported Thu, 12/29/2022 5:34 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 12/29/2022 5:34 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Michael Nolasco	19280	958992	MS TIMES SQ

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. Timothy Morales		974368	
2. PO Shen Chen	13596	974005	MS TIMES SQ

Officer(s)	Allegation	Investigator Recommendation
A . PO Michael Nolasco	Force: Police Officer Michael Nolasco used physical force against § 87(2)(b)	
B . PO Michael Nolasco	Force: Police Officer Michael Nolasco used physical force against § 87(2)(b)	
C . PO Michael Nolasco	Abuse: Police Officer Michael Nolasco stopped § 87(2)(b)	
D . PO Michael Nolasco	Abuse: Police Officer Michael Nolasco took a photograph of § 87(2)(b)	
E . PO Michael Nolasco	Abuse: Police Officer Michael Nolasco threatened to issue summons to § 87(2)(b)	
F . PO Michael Nolasco	Abuse: Police Officer Michael Nolasco interfered with § 87(2)(b) use of a recording device.	
G . PO Michael Nolasco	Abuse: Police Officer Michael Nolasco failed to provide § 87(2)(b) with a business card.	
H . PO Michael Nolasco	Abuse: Police Officer Michael Nolasco took law enforcement action based upon actual or perceived national origin	
§ 87(2)(g), § 87(4-b)		

## Case Summary

On December 29, 2022, the CCRB received a complaint filed by § 87(2)(b) via the agency's website.

On December 28, 2022, at 7:25 p.m., § 87(2)(b) was walking in the vicinity of 7<sup>th</sup> Avenue between West 44<sup>th</sup> Street and 45<sup>th</sup> Street in Manhattan. § 87(2)(b) had a camera around his neck. § 87(2)(b) encountered Police Officer Michael Nolasco of Midtown South Times Square, who told him that photographers were not allowed in the area; PO Nolasco ordered § 87(2)(b) back on the sidewalk. As § 87(2)(b) turned around to walk back toward the sidewalk, PO Nolasco pushed him in the back twice. (**Allegation A: Force,** § 87(2)(g) § 87(2)(b) asked § 87(2)(b) why he had pushed him, and PO Nolasco pushed § 87(2)(b) in the chest area and ordered him to get on the sidewalk. (**Allegation B: Force,** § 87(2)(g) § 87(2)(b) filmed the interaction. PO Nolasco asked § 87(2)(b) to provide his identification and photographed the identification on his department cellphone. (**Allegation C: Abuse of Authority,** § 87(2)(g) § 87(2)(b) (**Allegation D: Abuse of Authority,** § 87(2)(g) In addition, PO Nolasco threatened to issue summonses to § 87(2)(b) and interfered with § 87(2)(b) attempts to record the interaction on his camera (**Allegation E: Abuse of Authority,** § 87(2)(g) (**Allegation F: Abuse of Authority,** § 87(2)(g) PO Nolasco also did not offer § 87(2)(b) a business card. (**Allegation G: Abuse of Authority,** § 87(2)(g) § 87(2)(b) alleged that other people were in the roadway, and that PO Nolasco targeted him possibly because of his race or his name. (**Allegation H: Abuse of Authority – Biased Policing,** § 87(2)(g) § 87(2)(b) was not arrested or summonsed as a result of this incident.

§ 87(2)(g), § 87(4-b)

The investigation obtained body-worn camera footage depicting the incident. (**Board Review 1**).

## Findings and Recommendations

**Allegation (A) Force: Police Officer Michael Nolasco used physical force against § 87(2)(b)**

**Allegation (B) Force: Police Officer Michael Nolasco used physical force against § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer Michael Nolasco stopped § 87(2)(b)**

On January 30, 2023, the investigation obtained an official statement from § 87(2)(b) regarding an incident that occurred on December 28, 2022, at approximately 7:25 PM in the vicinity of West 45<sup>th</sup> Street and 7<sup>th</sup> Avenue in Manhattan. § 87(2)(b) identified himself as an Egyptian male with black hair and brown eyes, standing 5'11" tall and weighing 180 pounds. (**Board Review 7**).

§ 87(2)(b) had been practicing his photography in the vicinity of West 45<sup>th</sup> Street and 7<sup>th</sup> Avenue, where there were metal gates lining the streets. § 87(2)(b) noticed a break in the metal gates near the intersection of West 45<sup>th</sup> Street and 7<sup>th</sup> Avenue, and so he walked into the street toward a McDonald's restaurant. § 87(2)(b) was standing in a bus lane with a camera around his neck when PO Nolasco ordered him to get on the sidewalk and said, "No photographers here." § 87(2)(b) replied that he was not taking photographs in the street and was only attempting to cross the street. As § 87(2)(b) walked back toward the opening in the metal gates, PO Nolasco pushed § 87(2)(b) in the back once or twice. § 87(2)(b) noticed that his camera lens was scratched after the

interaction and believed that the camera had made contact with the metal gate as a result of the push; he did not allege that this property damage was purposeful. **(Board Review 7).**

§ 87(2)(b) told PO Nolasco not to touch him and began recording PO Nolasco on his cellphone. PO Nolasco asked § 87(2)(b) why he was recording him, and gave § 87(2)(b) several more orders to get on the sidewalk. PO Nolasco then pushed § 87(2)(b) in his chest area and continued to order him to get on the sidewalk. § 87(2)(b) was walking toward the opening in the gate to access the sidewalk when PO Nolasco grabbed him by the collar and told § 87(2)(b) he was being stopped. PO Nolasco asked § 87(2)(b) to provide his identification, which § 87(2)(b) did. **(Board Review 7).**

On September 20, 2023, the investigation obtained an official statement from PO Nolasco. On December 28, 2022, PO Nolasco was assigned to foot patrol between West 44<sup>th</sup> Street and West 45<sup>th</sup> Street along 7<sup>th</sup> Avenue. PO Nolasco observed § 87(2)(b) taking photographs of tourists in the first or second lane of 7<sup>th</sup> Avenue, with oncoming traffic as the backdrop. There had been an incident involving a fire truck across the street approximately five to ten minutes prior, and PO Nolasco's supervisor, Sergeant Mohammad Khan, had instructed him to keep pedestrians out of the roadway. There were other people in the roadway aside from § 87(2)(b) **(Board Review 7).**

PO Nolasco went into the roadway and ordered everyone to get onto the sidewalk, although he did not recall if anyone other than § 87(2)(b) was taking photographs. § 87(2)(b) ignored these commands. After issuing three verbal commands to return to the sidewalk, § 87(2)(b) stated that others were also in the roadway. PO Nolasco replied that he could only address one person at a time, and then he escorted § 87(2)(b) out of the roadway by placing one hand on his back and using his other hand to point in the direction he wanted § 87(2)(b) to walk. **(Board Review 7).**

Once on the sidewalk, PO Nolasco told § 87(2)(b) that if he went in the roadway again, he would receive a summons. § 87(2)(b) repeated that other people were in the roadway and that it was not fair that PO Nolasco was only speaking to him. PO Nolasco stated he could only speak to one person at a time and activated his body-worn camera. PO Nolasco informed the investigation that he could have issued § 87(2)(b) a summons for disorderly conduct for obstructing vehicular traffic but decided not to because § 87(2)(b) had complied by returning to the sidewalk. PO Nolasco testified that he did not conduct a stop of § 87(2)(b) because he only issued warnings to § 87(2)(b) and did not follow through with completing a summons. Earlier in the interview, PO Nolasco had testified that § 87(2)(b) was stopped because PO Nolasco had the authority to issue a summons. However, PO Nolasco later clarified that § 87(2)(b) was not stopped up until the time at which a summons was being issued, which in this case, PO Nolasco chose not to do. Two additional officers, PO Shen Chen and PO Timothy Morales, came to the location during PO Nolasco's interaction with § 87(2)(b). PO Nolasco was not specifically working with them on the date of incident and believed they joined the interaction after they saw that § 87(2)(b) was refusing to comply. **(Board Review 7).**

The investigation obtained body-worn camera footage depicting the incident. At 19:28:54 of PO Chen's BWC, PO Nolasco places two hands on § 87(2)(b) lower chest and takes a couple steps forward. § 87(2)(b) takes a couple steps backward onto the sidewalk immediately behind him. At 19:29:30, PO Nolasco is depicted gripping the right-hand side of § 87(2)(b) open jacket. § 87(2)(b) or his camera, are not depicted making contact with the metal gate **(Board Review 1, Board Review 20).**

PO Nolasco's footage begins with him and § 87(2)(b) standing next to the curb on the street. At 19:29:33 in the native timestamp of PO Nolasco's BWC, PO Nolasco asks § 87(2)(b) for his

identification, which § 87(2)(b) provides. PO Nolasco then asks PO Morales for a C-Summons. At 19:30:08, PO Nolasco asks § 87(2)(b) if he is going to stay out of the street or if he needs a summons “to enforce it.” (**Board Review 1, Board Review 19**).

Patrol Guide Procedure 221-02 provides that “force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In determining whether use of force was reasonable, Patrol Guide Procedure 221-02, provides that members of service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade custody
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject’s violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence. (**Board Review 13**).

Patrol Guide Procedure 212-11, regarding *Investigative Encounters: Requests for Information, Common Law Right of Inquiry* and Level 3 Stops, states that “A Terry Stop/Level 3 encounter is any encounter between a civilian and a uniformed member of the service in which a reasonable person would not feel free to disregard an officer and walk away.” The procedure further provides that officers may, “[u]pon reasonable suspicion that the person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor, stop and detain the person for the purpose of conducting a criminal investigation.” (**Board Review 2**).

In contrast, in order to stop an individual for a non-criminal violation, rather than a felony or misdemeanor, a police officer must have probable cause to believe that the individual committed in the offense in their presence. See N.Y. CLS Criminal Proc Law §§ 140.10(1), 150.20(1)(a); *People v. Revi*, 2024 N.Y. Misc. LEXIS 613 (App. Term, 1st Dep’t 2024); *People v. Gulley*, 2005 NYLJ LEXIS 34 (Sup. Ct, Queens Co. 2005) (**Board Review 27**).

NYS CLS Penal Section 240.20 states a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creates a risk thereof . . . obstructs vehicular or pedestrian traffic.” Disorderly conduct is not a felony a misdemeanor but, rather, a violation. (**Board Review 16**).

There is no footage depicting the time period in which § 87(2)(b) exited the street and returned to the sidewalk. § 87(2)(b) reported that during this time, PO Nolasco pushed him once or twice in the back, causing his camera lens to be scratched by the metal gate. PO Nolasco denied pushing § 87(2)(b) in the back and stated that § 87(2)(b) and his camera did not make contact with any metal gate. § 87(2)(g)

The body-worn camera footage does depict PO Nolasco placing his two hands on the lower chest of § 87(2)(b) as he walks forward, and § 87(2)(b) walks backward onto the sidewalk. § 87(2)(g)

§ 87(2)(b) and PO Nolasco provided conflicting testimony as to whether § 87(2)(b) was ever stopped by PO Nolasco. While § 87(2)(b) reported that PO Nolasco grabbed him by the collar and told § 87(2)(b) he was being stopped, PO Nolasco denied grabbing § 87(2)(b) by the collar or stopping him. PO Nolasco's BWC footage shows that he asked for and obtained § 87(2)(b) identification and asked PO Morales for a C-Summons, before immediately asking § 87(2)(b) if he was willing to comply with the command to stay out of the roadway in the absence of receiving a summons. The footage does not depict PO Nolasco grabbing § 87(2)(b) by the collar or telling him that he was being stopped. During much of the interaction wherein PO Nolasco is telling § 87(2)(b) to remain on the sidewalk, a reasonable person would believe they are free—and, in fact, encouraged—to leave the interaction and go to the sidewalk. However, the investigation finds that the time at which PO Nolasco asked § 87(2)(b) for identification and retrieved a blank C-Summons, a reasonable person would believe that a stop had been initiated and they were not free to leave. § 87(2)(g)

Because PO Nolasco stated in his CCRB testimony that he stopped § 87(2)(b) for the non-criminal offense of disorderly conduct (**Board Review 7**), the stop would only have been proper if it was supported by probable cause. § 87(2)(b) and PO Nolasco provided conflicting testimony regarding the events that preceded PO Nolasco approaching § 87(2)(b). While § 87(2)(b) testified that he was simply attempting to cross the street, PO Nolasco testified that he observed § 87(2)(b) taking tourists in the middle of the street, with oncoming traffic as the backdrop. Furthermore, while § 87(2)(b) testified that he was the only person in the street to receive the command to vacate the roadway, PO Nolasco testified that his initial command applied to everyone.

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Michael Nolasco took a photograph of**

§ 87(2)(b)

**Allegation (E) Abuse of Authority: Police Officer Michael Nolasco threatened to issue summons to § 87(2)(b)**

**Allegation (F) Abuse of Authority: Police Officer Michael Nolasco interfered with § 87(2)(b) use of a recording device.**

§ 87(2)(b) reported that PO Nolasco photographed his identification, and said, "Okay if you record me, I took a picture of your ID. Show me what you're going to do." PO Nolasco then stated that he would give § 87(2)(b) a warning this time but would issue a summons next time. (**Board Review 7**).

At 19:31:19, PO Nolasco's body-worn camera footage depicts him saying the following to § 87(2)(b): "Alright, you want the summons? What's going on here? You're putting the camera in my face. Maybe I should write the summons instead. Maybe I should write the summons instead. I'm giving you a chance and you're putting the camera in my face. You got my name and I got yours. I'm not even going to comment. I'm just going to hand you the summons and that's it. And I'm

going to write you multiple summons, how about that? No problem. You got my name. I got yours. We're good now. Stay on the sidewalk.” (Board Review 19).

PO Nolasco testified that he photographed § 87(2)(b) identification on his Departmental cell phone, despite having decided to give § 87(2)(b) a warning, and explained that he did so in case § 87(2)(b) went into the street again and he needed to issue a summons to § 87(2)(b). PO Nolasco stated that he had the authority to issue § 87(2)(b) a summons for disorderly conduct via vehicular traffic and for exchanging money outside the “DAS,” which PO Nolasco explained was an area designated in Times Square for transactions. However, PO Nolasco conceded that he never observed § 87(2)(b) exchange money or complete a transaction with anyone. PO Nolasco testified that § 87(2)(b) had a right to record the interaction and that he had not stopped § 87(2)(b) because PO Nolasco had decided to issue a warning and not a summons. PO Nolasco testified that he made these statements to § 87(2)(b) because § 87(2)(b) cellphone was uncomfortably close to him.

NYS Right to Monitor Act Section (2) states that a person not under arrest or in the custody of a law enforcement official has the right to record law enforcement activity. NYS Right to Monitor Act Section (3) (ii) provides that “[a] claim of unlawful interference with recording a law enforcement activity is established . . . when a person demonstrates that he or she exercised or attempted to exercise the right . . . to record law enforcement activity and an officer acted to interfere with that person’s recording of a law enforcement activity. . . by . . . threatening that person for recording a law enforcement activity[.]” (Board Review 12).

PO Nolasco’s testified that § 87(2)(b) was not in custody and was permitted to record the interaction. PO Nolasco also testified that he only observed § 87(2)(b) commit one infraction, which was disorderly conduct via obstructing vehicular traffic. PO Nolasco’s body-worn camera footage makes clear that, in response to § 87(2)(b) “putting the camera in [his] face,” PO Nolasco threatened to issue a summons in lieu of a warning for § 87(2)(b) being in the roadway. This threat escalated when PO Nolasco further stated he would issue § 87(2)(b) several summonses without explanation, which PO Nolasco had no basis to do. Collectively, these actions indicate that PO Nolasco’s actions were in retaliation for § 87(2)(b) attempts to record him. PO Nolasco stated that he took a photograph of § 87(2)(b) identification to issue a summons for an offense that § 87(2)(b) might commit in the future, however, he offered no reason as to why he could not have obtained the identification once § 87(2)(b) committed an offense for which he actually intended to issue a summons. After photographing § 87(2)(b) identification, he used that photograph to threaten § 87(2)(b) with baseless summonses in response to § 87(2)(b) recording the interaction. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (G) Abuse of Authority: Police Officer Michael Nolasco failed to provide § 87(2)(b) with a business card.**

PO Nolasco testified that he did not provide § 87(2)(b) with a business card at the conclusion of the encounter because § 87(2)(b) did not request one.

According to the Right to Know Act as defined in New York City Administrative Code Section 14-174 (Board Review 14), “during a law enforcement activity,” an officer shall “offer a business card



to such person at the conclusion of any such activity that does not result in an arrest or summons.” Section 14-174 defines law enforcement actions as:

1. Noncustodial questioning of individuals suspected of criminal activity;
2. Pedestrian stops where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime;
3. Frisks;
4. Searches of persons or property, including vehicles;
5. Roadblock or checkpoint stops;
6. Home searches; and
7. Investigatory questioning of victims of or witnesses to crimes.

§ 87(2)(g)

**Allegation (H) Abuse of Authority: Police Officer Michael Nolasco took law enforcement action based upon actual or perceived national origin.**

In his statement to the CCRB, § 87(2)(b) stated that he was unsure why PO Nolasco had only addressed him, and not the other people in the roadway, but § 87(2)(b) suspected it may have been because of his race or his name. (**Board Review 7**).

NYPD Administrative Guide Section 304-17: *Department Policy Prohibiting Racial Profiling and Bias-Based Policing* (**Board Review 10**) defines racial profiling as “a decision to initiate [law] enforcement action against a person [that] is motivated even in part by a person’s actual or perceived race, color, ethnicity or national origin, . . . unless the officer’s decision is based on a specific and reliable suspect description that includes not just race, age, and gender, but other identifying characteristics or information.”

Race does not have to be the sole, primary, or predominant motivation for the law enforcement action in question in order to substantiate an allegation of racially biased policing. *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 265 (1977); *United States v. City of Yonkers*, 96 F.3d 600, 611-12 (2d Cir. 1996); *Floyd v. City of New York*, 959 F.Supp.2d 540, 571 (S.D.N.Y. 2013). If the preponderance of the evidence establishes that the civilian’s race played any role in the officer’s decision making, the racial profiling allegation should be substantiated, regardless of any non-discriminatory reasons the officer gives for their actions. *Yonkers*, 96 F.3d at 612; *Raza v. City of New York*, 998 F.Supp.2d 70, 79-80 (E.D.N.Y. 2013); *Bennett v. Health Sys., Inc.*, 92 A.D.3d 29, 40 (1st Dep’t 2011). Thus, a law enforcement action that is otherwise legally justified (e.g., a vehicle stop supported by probable cause of a traffic violation) can still constitute racial profiling if the officer was motivated at least in part to take the action by the civilian’s actual or perceived race. See *PBA v. City of N.Y.*, 142 A.D.3d 53, 66-67 (1st Dep’t 2016); *Raza*, 998 F.Supp.2d at 79; *Floyd*, 959 F.Supp.2d at 667. (**Board Review 17**).

Because racially discriminatory intent “is rarely susceptible to direct proof,” it is often established through circumstantial evidence. *Millan-Hernandez v. Barr*, 965 F.3d 140, 148 (2d Cir. 2020); *Bennett*, 92 A.D.3d at 40-41. However, rarely is one piece of circumstantial evidence sufficient on its own to establish racially discriminatory intent. The factfinder must instead consider the “totality of the relevant facts.” *Washington v. Davis*, 426 U.S. 229, 242 (1976); *Leblanc-Sternberg v. Fletcher*, 67 F.3d 412, 425 (2d Cir. 1995) (**Board Review 9**). Examples of circumstantial evidence to consider include, but are not limited to:

- (i) data showing a pattern of racial disparities in the officer's enforcement activity over time;
- (ii) officer history of prior biased acts or similar misconduct committed against persons from the complainant/victim's racial/ethnic group;
- (iii) the sequence of events leading up to the law enforcement actions at issue;
- (iv) the falsity of the officer's non-discriminatory explanations for their actions;
- (v) selective enforcement of the law
- (vi) officer's violation of law and/or department policies and procedures during the incident in question.

The investigation requested from NYPD information regarding PO Nolasco's prior IAB profiling and EEO complaint histories and data on his C summons and pedestrian stop activity for the year preceding this incident (**Board Reviews 24, Board Review 25, Board Review 26**). In response, NYPD indicated that PO Nolasco had no prior IAB profiling or EEO complaints and that he did not issue any C summonses or record any pedestrian stops in the year preceding this incident.

As discussed above, without additional evidence—such as surveillance or body-worn camera footage—the investigation cannot resolve the conflicting testimonies provided by PO Nolasco and § 87(2)(b) concerning the circumstances that preceded the stop or whether PO Nolasco's explanation for stopping § 87(2)(b) was true and a legally valid basis for conducting a pedestrian stop. § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



§ 87(2)(g), § 87(4-b)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party. (**Board Review 6**).
- PO Nolasco has been a member of service for eight years and has been a subject in three CCRB complaints and ten allegations, none of which were substantiated. § 87(2)(g)

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of March 14, 2024, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (**Board Review 15**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: Bias 1

Investigator:	<u>Brooke Lewis</u> Signature	<u>Brooke Lewis, Inv. Atty.</u> Print Title & Name	<u>March 27, 2024</u> Date
Squad Leader:	<u>Carlmais Johnson</u> Signature	<u>IM Carlmais Johnson</u> Print Title & Name	<u>March 28, 2024</u> Date
Reviewer:	<u>Darius Charney</u> Signature	<u>RPBP Dir. Darius Charney</u> Print Title & Name	<u>March 28, 2024</u> Date